IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 735 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI VAJESINH PARMAR

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR MH SHAIKH for Petitioner - Since deceased
MR A.K.CLERK, Amicus Curie for Petitioner
MR HS MUNSHAW for Respondent No. 1
RULE SERVED for Respondent No. 2
MR PREMAL JOSHI, AGP for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/01/2001

ORAL JUDGEMENT

1. The petitioner challenges the condition by which he was required to pay Rs.10,000=00 before sanctioning

his resignation as a primary teacher and seeks refund of the amount.

2. The petitioner was appointed as a primary teacher by an order dated 27th October 1987, at Annexure `A' to the petition, issued by the District Primary Education Officer, District Education Committee, Amreli. His appointment was on a temporary basis in the pay scale of Rs.1200 - Rs.2400. As per condition No.9 of the appointment letter, his services were liable to be terminated at any time without notice since he was appointed purely on adhoc basis. According to the petitioner, since his appointment was purely temporary, he decided to resign. When he approached the respondent No.2 in connection with his resignation, he was advised that unless a deposit of Rs.10,000=00 was made, his resignation would not be accepted. The petitioner was thus forced to deposit Rs.10,000=00, which he did on 10/8/1988 as per the xerox copy of the challan at Annexure `B' to the petition while submitting his resignation. He also deposited a sum of Rs.378=00 which he was required to deposit under the Code No. 0202 Education Account.

2.1 It is contended in the petition that the action of the respondents in recovering Rs.10,000=00 as a condition for passing his resignation was unwarranted and violated the fundamental rights of the petitioner under Article 14, 16 and 300-A of the Constitution. The respondents did not care to reply to the letter of the petitioner addressed to the respondent No.1 on 26/11/1988, requesting for the refund of the amount.

3. Though the matter has been pending since more than 10 years, the respondents authorities have not cared to file any affidavit in reply. From the record as it exists, it appears that, in the appointment order at Annexure `A' to the petition, there was no condition requiring the petition to pay any amount as a condition precedent for acceptance of his resignation. As per condition No.7, the only requirement that was imposed was that in case the petitioner resigns, he will have to deposit notice or notice pay as per the rules. This clause cannot be construed so as to mean that the petitioner was required to deposit Rs.10,000=00 as a condition precedent for acceptance of his resignation. No rule is pointed out on behalf of the respondents which would justify imposition of any such condition or retention of the amount so deposited. The petitioner was given only a temporary appointment and he was free to resign at any time he desired and was only required to

deposit notice pay as per the rules. Therefore, the action of the respondents in requiring the petitioner to deposit Rs.10,000=00 for accepting his resignation as a primary teacher and of not refunding the amount after his resignation, is wholly unjustified, arbitrary and violative of Article 14 and 16 of the Constitution. The action is also expropriatory since the amount could not have been recovered or retained by the respondent in absence of any statutory empowerment.

4. In this view of the matter, the petitioner succeeds and the respondents are hereby directed to forthwith refund the amount of Rs.10,000=00 to the petitioner with interest at the rate of 12% per annum from the date of this petition (i.e. 6/2/1990) till realisation. Rule is made absolute accordingly with no orders as to costs.

5. The learned counsel present in the Court pointed out that the advocate for the petitioner is no more. It is therefore directed that the petitioner be informed about this decision by the Registry.

[R.K.ABICHANDANI, J.]

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